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April 5, 2018

HAND DELIVERED

Commissioner Tom Landwehr
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4040

Minnesota Department of Natural Resources
Division of Lands and Minerals
500 Lafayette Road, Box. 45
St. Paul, MN 55155-4025

RE: *In re the Matter of the Minnesota Department of Natural Resources' Consideration of a draft Permit to Mine for the PolyMet NorthMet Copper-Nickel Mine Project*

Comments on Petitions for Contested Case Hearing based on PolyMet March 2018 Technical Report NI 43-101F1 and related materials.

Dear Commissioner Landwehr:

The following comments are submitted on behalf of WaterLegacy pertaining to the Petitions for Contested Case Hearing on the PolyMet NorthMet draft Permit to Mine submitted by WaterLegacy on February 27, 2018 and by the Minnesota Center for Environmental Advocacy (MCEA) on February 28, 2018.¹

Our comments address questions and concerns raised by the March 26, 2018 NI 43-101F1 Technical Report on the NorthMet Deposit filed by PolyMet Mining Corp. (PolyMet March 2018 Technical Report),² along with related documents also filed on SEDAR, the official site for Canadian public securities information, by PolyMet and Glencore in March 2018,³ and provided by PolyMet and by Glencore to news media⁴ and investors⁵ to explain recent developments related to financial feasibility and the status of the PolyMet NorthMet copper-nickel mine project (PolyMet Project).

¹ These Comments, along with Exhibits and a Table of Exhibits, are enclosed on a recordable disc.

² PolyMet Mining NorthMet Project Form NI 43-101F1 Technical Report, March 26, 2018 and filed on SEDAR (www.sedar.com) on March 27, 2018 (PolyMet March 2018 Technical Report), Exhibit 1.

³ PolyMet Mining Annual Information Form, filed on SEDAR, March 28, 2018 (PolyMet March 2018 Annual Information Form), Exhibit 2; PolyMet Mining Management Discussion and Analysis, filed on SEDAR, March 28, 2018 (PolyMet March 2018 MD&A), Exhibit 3; PolyMet Mining Consolidated Financial Statements, filed on SEDAR, March 28, 2018 (PolyMet March 2018 Consolidated Financial Statements), Exhibit 4; Glencore Early Warning Report Form 62-103F1, filed on SEDAR, March 28, 2018 (Glencore March 2018 Early Warning Report), attached as Exhibit 5.

⁴ PolyMet Mining News Release, *PolyMet reaffirms economic and technical viability of NorthMet Project*, filed on SEDAR, March 27, 2018 (PolyMet News Release 2018 Technical Report), Exhibit 6; Glencore News Release, *Glencore restructures loans to PolyMet and acquires common share purchase warrants*, filed on SEDAR, March 28, 2018 (Glencore News Release March 2018), Exhibit 7.

⁵ PolyMet Mining, *Investor Presentation for NorthMet Project*, March 28, 2018 (PolyMet March 2018 Investor Presentation), Exhibit 8.

At the time when the draft Permit to Mine was released for public comment by the Minnesota Department of Natural Resources (DNR) and during the public comment period, PolyMet Mining Corp. (PolyMet) had yet to file an updated feasibility report pertaining to the NorthMet copper-nickel project or to present its results to the public. WaterLegacy believes that information in PolyMet's March 2018 Technical Report, related SEDAR filings, and statements made to the press and to investors regarding financial feasibility and the status and relationships pertaining to PolyMet and the PolyMet project raise material questions of fact that should be addressed in a contested case hearing and that need to be resolved before a permit to mine could be issued pertaining to the PolyMet Project. These questions can be summarized as follows:

1. Is the financial feasibility of the PolyMet NorthMet project uncertain, jeopardizing PolyMet's capacity to provide financial assurance and long-term compliance with water quality standards?
2. Do PolyMet's new statements about the expansion capacity of the tailings basin and alternative storage locations raise additional concerns regarding the stability and siting of the proposed NorthMet flotation tailings storage facility?
3. Does new information pertaining to PolyMet's strategic partnership with Glencore, as well as regarding the financial feasibility and attractiveness of the PolyMet NorthMet project to outside investors, require that Glencore be included on any PolyMet permit to mine?

WaterLegacy requests that these disputed questions of fact be addressed in the contested case hearing requested by our organization and by the MCEA on behalf of itself and other groups. The following discussion demonstrates that each of these questions is material and significant, and supports denial of PolyMet's draft Permit to Mine.

1. The financial feasibility of the PolyMet NorthMet project is uncertain, placing PolyMet's capacity to provide financial assurance and comply with water quality standards post-closure in jeopardy.

PolyMet's March 2018 Technical Report states that its financial analysis, "demonstrates that the NorthMet Project is technically viable and has the potential to generate positive economic returns based on the assumptions and conditions set out in this Report."⁶ This is not an unqualified endorsement.

First, the PolyMet 2018 Technical Report projects a rate of return on investment which is approximately one-third of the after tax rate of return projected in 2012.

The 2018 Technical Report defines "Phase I" as the Project proposed in environmental review and in PolyMet's application for a Permit to Mine (PTM), excluding hydrometallurgical

⁶ PolyMet March 2018 Technical Report, *supra*, p. 251.

processing. PolyMet now estimates that Phase I would have capital costs of \$945 million and an after tax internal rate of return (IRR) of 9.6%.⁷ The complete Project for which permits have been sought, including the autoclave processing - Phase I and Phase II – would have a capital cost of \$1,204 million and an IRR of 10.3%.⁸

PolyMet's 2012 Technical Report estimated the total capital cost of the project as \$516 million, including both Phase I and Phase II.⁹ In 2012, PolyMet projected an after tax internal rate of return of 30.6%.¹⁰ It is axiomatic that increases in capital cost since 2012, along with decreases in the projected rate of return, would make investment in the project less attractive to investors.

Second, the 2018 Technical Report also acknowledges, "Financial returns for the Project are highly sensitive to changes in metal prices."¹¹ The Report models this price sensitivity, demonstrating that for Phase I (no autoclave) a 10% reduction in estimated metals prices would result in an after tax rate of return of 5.5%, nearly a 43% drop in the projected (9.6%) rate of return. For both Phase I and Phase II (PTM application Project) combined, a 10% reduction in estimated metals prices would result in an after tax rate of return of 6.5%, nearly a 47% drop in the projected (10.3%) rate of return for the PolyMet Project.¹²

PolyMet's price assumptions for copper and nickel, which represent almost 80% of project revenue, were \$3.22/lb for copper and \$7.95/lb for nickel.¹³ Pricing for all metals that will be produced by the PolyMet NorthMet project will be based on the London Metal Exchange (LME).¹⁴

The LME suggests that the price assumptions for PolyMet's financial analysis may be too high, particularly for nickel. On April 2, 2018, the LME copper prices for a three-month contract were at \$3.03/lb,¹⁵ approximately 9% less than the PolyMet Report's assumptions. The nickel prices on the LME for a three-month contract were at \$6.03/lb,¹⁶ approximately 24% less than PolyMet's assumptions. Based on the sensitivity analysis in the 2018 Technical Report, these divergences between assumptions and current LME prices could substantially undermine the potential of the PolyMet Project to generate a positive return for investors.

Next, although the Technical Report states that costs for financial assurance "have been accounted for in the overall project economics,"¹⁷ the PolyMet financial analysis may have minimized costs for financial assurance and for long-term active water quality treatment.

⁷ *Id.*, pp. 20, 226 (Table 22-2).

⁸ *Id.*, pp. 21, 226 (Table 22-2).

⁹ PolyMet Mining NorthMet Project Form NI 43-101 Technical Report filed on SEDAR October 12, 2012 (PolyMet 2012 Technical Report), p. 22-5, autop. 8, Report excerpts attached as Exhibit 9. The 2011 project revision removed a second autoclave and additional metals processing.

¹⁰ *Id.*, p. 1-24, autop. 2.

¹¹ PolyMet March 2018 Technical Report, *supra*, p. 26.

¹² *Id.*, p. 227 (Tables 22-4 and 22-5).

¹³ *Id.*, pp. 25, 32.

¹⁴ *Id.*, p. 191. This is a condition of PolyMet's offtake agreement with Glencore to purchase all PolyMet products.

¹⁵ London Metal Exchange, <https://www.lme.com>, consulted on Apr. 2, 2018. Copper bids were at \$6719/metric tonne (2202.6 pounds).

¹⁶ *Id.*, Nickel bids were at \$13,280/metric tonne (2202.6 pounds).

¹⁷ PolyMet March 2018 Technical Report, *supra*, p. 196.

The Technical Report is peculiarly opaque as to what costs have been assumed for PolyMet NorthMet financial assurance.¹⁸ The little information supplied fails to demonstrate that financial assurance would be appropriately funded. The only place in the Technical Report listing costs that might reflect financial assurance is Table 22-9.¹⁹ Table 22-9 lists G&A, Royalties & Reclamation as a single line item beginning in the first construction year at \$10 million and ranging between about \$20 million to \$34 million during mine operations years.²⁰ Elsewhere the Report discloses that General and Administration costs average \$5 million per year while the mine is operating,²¹ but Royalties are not estimated and cannot be disaggregated from Reclamation costs.

After Mine Year 20, the model suggests that both G&A and Royalties will cease, and Reclamation is estimated between \$10 and \$12 million for three years. By four years after mine closure, Reclamation costs have declined to under \$4 million and, after Mine Year 24, the Report does not supply any cost figures for Reclamation.²²

The Technical Report provides too little information to determine the degree of deficit in its Financial Model of financial assurance. However, the sketchy data provided suggests that PolyMet's model of financial feasibility would not ensure that cash, an irrevocable letter of credit and bonds are sufficient to cover the liabilities outlined by the DNR in Draft Permit to Mine Conditions.²³

PolyMet's 2018 Report also suggests that long-term water quality treatment is neither assumed nor financed in predicting that the PolyMet Project is feasible. The Report states, "For purposes of the 2018 Technical Report, PolyMet has assumed that the Minnesota water quality standards governing sulfate in wild rice water will be revised, as required by law, after the NorthMet Project is in operations."²⁴ Although the Report includes a reverse osmosis membrane system in describing the wastewater treatment system,²⁵ the Closure Plan the Report describes does not include long-term mechanical water quality treatment. It describes "water management," "water management infrastructure reclamation" and includes "plans to transition from mechanical to non-mechanical water treatment."²⁶

Finally, PolyMet's reliance on the potential expansion of the PolyMet NorthMet mine project in its communications to the news media and to potential investors calls into question the economic feasibility of the project for which permits have been sought.

¹⁸ In contrast, the PolyMet March 2018 Technical Report provides detailed predictions of capital costs, indirect construction costs, labor costs, power use costs, costs for reagents and consumables, costs for parts and supplies, and even lab assay costs; *see Id.*, pp. 202, 207-211, 215-216, 219-222.

¹⁹ PolyMet March 2018 Technical Report, *supra*, p. 230, Table 22-9.

²⁰ *Id.*

²¹ *Id.*, p. 212 (Table 21-7).

²² *Id.*, p. 230, Table 22-9.

²³ *See* DNR's Draft Special Conditions for the PolyMet Permit to Mine ("DNR draft PTM Conditions"), Appendix A-p.2 attached as Exhibit 10. DNR's Draft Conditions for the PolyMet Permit to Mine are available online at https://files.dnr.state.mn.us/lands_minerals/northmet/permit_to_mine/permit_to_mine_draft_special_conditions.pdf

²⁴ PolyMet March 2018 Technical Report, *supra*, p. 197.

²⁵ *Id.*, p. 188.

²⁶ *Id.*, p. 196.

PolyMet's 2012 Technical Report described a stand-alone project that would process 32,000 tons per day and a total of 224 million tons of ore over 20 years.²⁷ Expansion was mentioned in a single sentence, "A sustained higher metal price regime has the potential to allow expansion of the existing pit phases."²⁸

In its March 2018 Technical Report, PolyMet, for the first time detailed expansion scenarios. In addition to the 32,000 tons per day for 20 years, 225 million total tons of ore Project reflected in environmental review and PolyMet's permit applications, the Report promoted two expansion scenarios. A throughput of 59,000 short tons per day (STPD) of ore, processing 293 tons of ore over only a 15-year mine life would result in "improved" financial indicators and an after tax rate of return of 18.5%.²⁹ The Report also stated that throughput of 118,000 tons per day, processing 730 million tons over a 19-year mine life "improves economics over the 32,000 STPD case," resulting in an after tax rate of return of 23.6%. This 118,000 tons per day expanded project would require a capital expenditure of \$2,243 million.³⁰

PolyMet's news release emphasized, "The 59,000 tpd and 118,000 tpd upside cases suggest . . . IRRs that range from 18 percent to 24 percent." PolyMet's President was quoted, "We felt it was it was important to quantify at a preliminary level what the potential economics of the entire NorthMet resources could be."³¹ Communications to investors touted three Production Scenarios: the 32,000 tpd Project for which permits have been sought, and the 59,000 tpd and 118,000 tpd "opportunity" and "expansion" cases, both of which include unproven reserves and neither of which have been subject to environmental or engineering analysis.³²

In short, as compared with 2012, what PolyMet proposed in its March 2018 Technical Report and promoted to investors is that, despite the lack of evidence such a plan would be supportable, if the Company more than tripled the volume of ore mined and more than quadrupled the project's capital costs, the PolyMet NorthMet project might achieve a rate of return about three-quarters of that previously projected.

Each of the factors in the preceding section - the decline in projected rate of return for the PolyMet project, the project's sensitivity to likely inflated metals prices, the failure to demonstrate that financial modeling includes financial assurance and long-term water quality treatment, and the promotion of speculative "opportunities" to misdirect attention from changes in potential economics – suggest that a contested case hearing must evaluate fundamental and disputed financial questions.

Is the PolyMet Project, with the scope and expenses defined in environmental review and the Draft Permit to Mine, financially feasible? Does PolyMet's modeling for potential profitability adequately account for financial assurance and long-term active water quality treatment? Finally,

²⁷ PolyMet 2012 Technical Report, *supra*, pp. 16-12, 17-1, 17-9, 17-16, 22-6, autop. 4-7, 9.

²⁸ *Id.*, p. 15-3, autop. 3.

²⁹ PolyMet March 2018 Technical Report, *supra*, p. 244.

³⁰ *Id.*

³¹ PolyMet News Release 2018 Technical Report, *supra*, p. 3.

³² PolyMet March 2018 Investor Presentation, *supra*, pp. 11, 21.

if PolyMet is using speculative expansion scenarios to promote the NorthMet project to outside investors, has the Project become an attractive investment only to PolyMet's "strategic partner," multinational commodity trading and mining company Glencore?³³

2. PolyMet's new information regarding the flotation tailings storage facility raise additional concerns about the stability and siting of the proposed NorthMet flotation tailings storage facility.

The expansion scenarios promoted in PolyMet's March 2018 Technical Report and communications to investors raise a number of engineering and environmental concerns. The petitions to the DNR for a contested case hearing on the PolyMet Permit to Mine have specifically emphasized disputed material facts pertaining to the siting and stability of the proposed NorthMet tailings facility. WaterLegacy believes that new information provided in PolyMet's SEDAR filings and presentation present additional factual questions about the PolyMet NorthMet tailings storage facility.

PolyMet's presentation to investors, in addition to promoting expansion of its proposed Project, described as an "existing asset" the fact that the LTVSMC plant site has a "tailings basin with over 300Mt (300 million tons) capacity."³⁴ This may sound like a large capacity, but the PolyMet Permit to Mine application states that the ore beneficiation for the 225 million tons of ore in the proposed base case PolyMet Project would generate an estimated cumulative total of 225 million tons of flotation tailings.³⁵

For any expansion of ore processing, storage of flotation tailings would need to be addressed. PolyMet's March 2018 Technical Report provides two answers to this potential problem. For the first expansion scenario, to process 293 million tons of ore within 15 years, the Report proposes, "Additional capital would be required to build out the existing FTB to accommodate the tails volumes anticipated for the 59,000 STPD scenario."³⁶

And for the second expansion scenario, to process 730 million tons over 19 year, the Technical Report states,

PolyMet has evaluated placing tailings from the 118,000 STPD flotation circuit by gravity to two existing taconite mine pits near the Erie plant. This is a less costly alternative than building out the existing FTB large enough to contain the additional volume anticipated under this scenario.³⁷

³³ PolyMet's initial agreements were with Glencore AG, a wholly-owned subsidiary of Glencore plc, the commodity trading and mining company based in Switzerland. In these comments, "Glencore" refers to both entities.

³⁴ PolyMet March 2018 Investor Presentation, *supra*, p. 7.

³⁵ PolyMet's Permit to Mine Application for the NorthMet Project December 2017 (PolyMet PTM Application) pp. 174, 266. The PolyMet PTM Application is available online at https://files.dnr.state.mn.us/lands_minerals/northmet/permit_to_mine/revised_permit_to_mine_application_and_appendices.pdf.

³⁶ PolyMet March 2018 Technical Report, *supra*, p. 243.

³⁷ *Id.*

Both approaches to tailings storage identified in the Technical Report require further scrutiny in a contested case hearing. If PolyMet is planning to build out the existing tailings facility to process 293 million tons of ore with a 59,000 tons per day throughput, rather than 225 million tons of ore with a 32,000 tons per day throughput, each of the concerns raised by WaterLegacy, by other petitioners, by consultants to DNR, and by DNR engineers regarding factors of safety and flotation tailings dam stability must be reevaluated.

In addition, as WaterLegacy and other petitioners have long suggested, the PolyMet record lacks any information justifying rejection of other sites for the deposition of flotation tailings. The March 2018 Technical Report, for the first time, acknowledges that PolyMet has evaluated placing a very large volume of flotation tailings from its potential copper-nickel mine project in existing taconite mine pits near the Erie plant. Costs for this alternative have been calculated, and would be less than a major build out of the existing tailings facility to accommodate a major project expansion.

The DNR, cooperating agencies, petitioners and members of the public must now have the opportunity to review and inquire about PolyMet's evaluation of this in-pit tailings disposal alternative. Although we don't yet know if disposal of tailings in existing taconite mine pits near the Erie plant might have other adverse impacts, this alternative would appear to use a brownfield site, reduce impacts on wetlands, and eliminate the potential for catastrophic failure of flotation tailings dams.

Given the new information supplied in PolyMet's March 2018 Technical Report about another storage alternative, it would seem reckless to proceed with permitting of the wet slurry and earthen dam flotation tailings storage facility proposed in the PolyMet draft Permit to Mine.

3. The increasingly intertwined relationship between PolyMet and Glencore supports including Glencore on any proposed Permit to Mine.

In addition to providing new information on the profitability of the proposed PolyMet Project and its reduced attractiveness to outside investors, documents filed with SEDAR in March 2018 demonstrate that Glencore and PolyMet have become so intertwined that both entities should be included on any proposed Permit to Mine for the PolyMet NorthMet project.

Minnesota Statutes state that "no person shall engage in or carry out a mining operation for metallic minerals within the state unless the person has first obtained a permit to mine from the commissioner."³⁸ Minnesota's nonferrous mining rules further provide, "For the purpose of this subpart, a person must possess capital and provide financial and operational decision making necessary to conduct the mining operation."³⁹ In addition, "When two or more persons are or will be engaged in a mining operation, all persons shall join in the application, and the permit to mine shall be issued jointly."⁴⁰ A "person" under this section means a "firm, partnership,

³⁸ Minn. Stat. 93.481 (2017).

³⁹ Minn. R. 6132.0300, subp. 1.

⁴⁰ Minn. R. 6132.0300, subp. 2.

corporation, joint venture or other legal entity.”⁴¹ An applicant for a permit to mine for nonferrous metals must disclose its parent companies, owners, principal stockholders, partners, and joint venturers.⁴² New information summarized below suggests that, absent Glencore, PolyMet lacks the capital to conduct the NorthMet mining operation, and that Glencore and PolyMet are jointly engaged in the financial and operational decision-making for the Project.

The only Minnesota case specifically discussing the placement of a foreign parent corporation on a permit held that the Minnesota Pollution Control Agency (MPCA) could not name a parent corporation to a permit without providing evidence either of long-term pollution problems or the specific financial structures of the mining entities. *In the Matter of Hibbing Taconite Co.*⁴³ the MPCA had declined to conduct a contested case hearing requested by the parent corporations, and its only findings supporting the naming of parent corporations as co-permittees were generic statements as to financial conditions in the mining industry, rather than findings pertaining to the Hibbing facility or any specific corporate structure.⁴⁴ The Minnesota Court of Appeals held that a contested case was required to evaluate specific facts regarding long-term pollution problems and the long-term financial viability of the Hibbing Taconite Company.⁴⁵ The Court explained,

While it is true that the parent corporation is not technically the managing board of its subsidiary corporation, it could still come under the definition of "person" if the corporation and its subsidiary were found to be so intertwined as to be one entity. *See Victoria Elevator Co. v. Meriden Grain Co., Inc.*, 283 N.W.2d 509 (Minn. 1979). However, such a finding depends upon certain facts which are not included in the administrative record, but which could be developed in a contested case hearing.⁴⁶

WaterLegacy believes that the relationship between PolyMet and Glencore, as shown in documents recently filed with SEDAR, demonstrates that PolyMet and its parent corporation, Glencore,⁴⁷ are sufficiently intertwined to support, if not require that Glencore be included on any Permit to Mine.

Although such words are not dispositive of a relationship, the terms used by and on behalf of PolyMet to describe Glencore are indicative of how closely the entities are intertwined. PolyMet’s Consolidated Financial Statements refer to Glencore as a “related party.”⁴⁸ PolyMet’s recent news release described the relationship with Glencore as one with a “strategic partner,”⁴⁹ and its presentation to investors emphasized the “Glencore Strategic Alliance.”⁵⁰ PolyMet’s March 2018 Annual Information Form refers to a “strategic partnership” between PolyMet and Glencore.⁵¹

⁴¹ Minn. R. 6132.0100, subp. 25.

⁴² Minn. R. 6132.1100, subp. 4.

⁴³ *In the Matter of Hibbing Taconite Co.*, 431 N.W. 2d 885 (Minn. Ct. App. 1988).

⁴⁴ *Id.* at 888.

⁴⁵ *Id.* at 892.

⁴⁶ *Id.*, at 893.

⁴⁷ Aquiror Glencore plc is described as the “Parent” in the Glencore March 2018 Early Warning Report, *supra*, p. 1.

⁴⁸ PolyMet March 2018 Consolidated Financial Statements, *supra*, p. 23.

⁴⁹ PolyMet News Release 2018 Technical Report, *supra*, p. 5.

⁵⁰ PolyMet March 2018 Investor Presentation, *supra*, p. 21; *see also* pp. 4, 12.

⁵¹ PolyMet’s March 2018 Annual Information Form, *supra*, p. 4.

In its December 2017 application for a Permit to Mine, PolyMet disclosed that Glencore owned 29.1% of PolyMet's common shares and would own 35.1% of the shares if all options and warrants were exercised.⁵² PolyMet made no further disclosures regarding its relationship with Glencore.

Since December 2017, Glencore's potential ownership of PolyMet if all warrants to purchase PolyMet shares were exercised has increased to 40.3%.⁵³

Without Glencore, PolyMet's capacity to conduct the NorthMet mining operation is questionable. PolyMet currently has a U.S. non-capital loss carry forward of approximately \$136.4 million.⁵⁴ PolyMet's current Management Discussion and Analysis states that, although PolyMet "has the necessary resources to carry out its plans and operations through December 31, 2018, it does not currently have sufficient capital to complete the development of NorthMet and generate future profitable operations." PolyMet "is in discussions to arrange sufficient capital to meet these requirements."⁵⁵

PolyMet's Technical Report explains that PolyMet's relationship to Glencore is important to reduce the risk of project failure due to lack of financing, stating, "PolyMet will require successful financing in order to complete the development and construction of the NorthMet Project. If PolyMet cannot raise the money necessary to fund the Project, development will be suspended." The Report continues, "This risk is partially mitigated through the company's ongoing relationship with Glencore."⁵⁶

In addition to the potential ownership by Glencore of 40.3% of PolyMet's shares, PolyMet relies on an offtake and marketing agreement with Glencore to purchase, transport, and sell *all* products that would be generated by the NorthMet project:

PolyMet has entered into a long-term marketing agreement with Glencore AG (Glencore) whereby Glencore will purchase all products (metals, concentrates or intermediate products) on independent commercial terms at the time of sale. . In view of Glencore's position as one of the world's largest traders of commodities, with especially strong positions in copper and nickel, there are no material risks associated with product marketing for the Project.⁵⁷

Documents recently filed on SEDAR disclose that, together with its dominant ownership share and control of all of PolyMet's potential products, Glencore has undertaken financial and technical operational decision making necessary to conduct the NorthMet mining operation. PolyMet and Glencore have entered into a Financial Advisory Agreement, where Glencore provides "financial advisory support" and is reimbursed by PolyMet. Similarly PolyMet has

⁵² PolyMet PTM Application, *supra*, p. 24.

⁵³ Glencore News Release March 2018, *supra*, p. 1; Glencore March 2018 Early Warning Report, *supra*, p. 1.

⁵⁴ PolyMet March 2018 Consolidated Financial Statements, *supra*, p.22.

⁵⁵ PolyMet March 2018 MD&A, *supra*, p. 18.

⁵⁶ PolyMet March 2018 Technical Report, *supra*, p. 36.

⁵⁷ *Id.* p. 191; *see also* PolyMet March 2018 Annual Information Form, *supra*, p. 23.

entered into a Technical Service Agreement with Glencore, where Glencore provides NorthMet “technical support” in “detailed project design and mineral processing” for which Glencore is reimbursed by PolyMet. In 2017, PolyMet reimbursed Glencore \$832,000 for these services.⁵⁸

The degree to which Glencore is already directing operational decisions for the PolyMet NorthMet project is evident in the Technical Report. PolyMet compiled the commodity price forecast with the aid of its “financial partners.”⁵⁹ Capital costs for mechanical equipment were based on specifications to ensure “the concentrate adheres to Glencore’s requirements for final product processing.” Further, designs for structural support steel, bins, chutes and building storage requirements “were based on consultation with Glencore.”⁶⁰

Prior to July 2016, PolyMet only had one member of its Board of Directors directly associated with Glencore; Stephen Rowland, a Trader who has been a Glencore Executive since 1988. However, in the past year-and-a-half, PolyMet has added two more Directors actively involved with Glencore: Helen Harper, Glencore’s Asset Manager for North American Copper Operations, who joined PolyMet’s Board in July 2016; and Mike Ciricillo, Glencore’s Head of Copper & Smelting and Refining, who joined PolyMet’s Board in July 2017. At least one of Glencore’s Directors serves on every one of PolyMet’s Board Committees.⁶¹

Glencore has the right to nominate the number of directors proportionate to Glencore’s ownership, not to exceed 49% of the total board.⁶² Interestingly, PolyMet’s recent Management Discussion and Analysis discloses that there are agreements with key non-Glencore leadership – Director/President/CEO Jonathan Cherry, CFO Patrick Keenan and Executive Vice President Bradley Moore – “containing severance provisions for termination without cause or in the event of a take-over.”⁶³

PolyMet may have previously given the impression in its 2012 Technical Report filed with SEDAR as well as documents submitted to DNR that the Company had independent capacity to attract investors and conduct a nonferrous mining operation. Whether or not this capacity was ever present, recent SEDAR filings and communications by PolyMet to news media and investors demonstrate that PolyMet is dependent on Glencore for capital, for marketing of all of its products for the duration of the NorthMet project, and for financial, technical and operational decision-making.

It may serve PolyMet’s and Glencore’s interests to propose that only PolyMet be deemed a permittee for a Permit to Mine. However, Minnesota’s law supports and Minnesota’s public interest requires that no Permit to Mine for the PolyMet NorthMet project be considered that does not include Glencore as one of the “persons” proposing to jointly engage in the proposed nonferrous mining operation.

⁵⁸ PolyMet March 2018 Consolidated Financial Statements, *supra*, p. 22; *See also* PolyMet March 2018 MD&A, *supra*, p. 18.

⁵⁹ PolyMet March 2018 Technical Report, *supra*, p. 25.

⁶⁰ *Id.*, p. 204.

⁶¹ PolyMet March 2018 Annual Information Form, *supra*, p. 48.

⁶² *Id.*, p. 51.

⁶³ PolyMet March 2018 MD&A, *supra*, p. 18.

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Conclusion

WaterLegacy appreciates the opportunity to comment on the petitions for contested case hearing that our organization and the MCEA previously filed in this matter.

New information disclosed by PolyMet's filings on SEDAR and communications to news media and investors underscores the need for a contested case hearing to evaluate the sufficiency of PolyMet financial assurance, the protection of Minnesota water resources from long-term pollution and degradation and the risks posed by a flotation tailings storage facility using outmoded technology and an inappropriate site with unstable foundations.

In addition, the new information made available by PolyMet during the last week of March 2018 requires an in-depth examination of whether the PolyMet NorthMet project is financially feasible as a stand-alone project. As a corollary, the DNR must determine, as a matter of fact, whether PolyMet and Glencore have become so intertwined that Glencore as well as PolyMet must be included on any proposed Permit to Mine.

WaterLegacy continues to request the specific relief that the DNR deny and reject the PolyMet draft Permit to Mine reflected in PolyMet's December 2017 application and in the DNR's draft Permit to Mine Conditions.

Respectfully submitted,

s/Paula G. Maccabee

Paula Goodman Maccabee
Counsel/Advocacy Director for WaterLegacy

Recordable Disc with Comments, Exhibits & Table of Exhibits Enclosed